

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Will Rossbach,

Complainant,

vs.

Erik Hjelle, Erik Hjelle & Associates Inc.,
and the Maplewood Firefighters
Association,

Respondents.

NOTICE OF DETERMINATION OF
PRIMA FACIE VIOLATION

AND

NOTICE OF AND ORDER FOR
EVIDENTIARY HEARING

TO: Jay Benanav, Weinblatt & Gaylord, PLC, 111 East Kellogg Blvd., Suite 300, St. Paul, MN 55101; Erik Hjelle, 874 Sterling Street South, Maplewood, MN 55119; Erik Hjelle & Associates, Inc., 7200 Hudson Blvd. North, #107, Oakdale, MN 55128; and the Maplewood Firefighters Association, 2020 Prosperity Lane, Maplewood, MN 55109.

On March 6, 2006, Will Rossbach filed a Complaint with the Office of Administrative Hearings alleging that Erik Hjelle, Erik Hjelle & Associates, Inc., and the Maplewood Firefighters Association violated various provisions of Minnesota Statutes Chapters 211A and 211B. After reviewing the Complaint and attached exhibits, the undersigned Administrative Law Judge has determined that the Complaint sets forth prima facie violations of Minn. Stat. §§ 211A.12 and 211B.13 on the part of Respondent Erik Hjelle, and a prima facie violation of Minn. Stat. § 211B.15 on the part of Respondent Erik Hjelle & Associates, Inc. All of the other allegations are dismissed.

THEREFORE, IT IS HEREBY ORDERED AND NOTICE IS HEREBY GIVEN that this matter will be scheduled for a telephone prehearing conference and an evidentiary hearing to be held at the Office of Administrative Hearings, 100 Washington Avenue South, Suite 1700, Minneapolis, Minnesota 55401, before three Administrative Law Judges. The evidentiary hearing must be held within 90 days of the date the complaint was filed, pursuant to Minn. Stat. § 211B.35. You will be notified of the date and time of the evidentiary hearing, and the three judges assigned to it, within approximately two weeks of the date of this Order. The evidentiary hearing will be conducted pursuant to Minnesota Statutes § 211B.35. Information about the evidentiary hearing procedures and copies of state statutes may be obtained online at www.oah.state.mn.us and www.revisor.leg.state.mn.us.

At the evidentiary hearing all parties have the right to be represented by legal counsel, by themselves, or by a person of their choice if not otherwise prohibited as the unauthorized practice of law. In addition, the parties have the right to submit evidence, affidavits, documentation and argument for consideration by the Administrative Law

Judge. Parties should bring with them all evidence bearing on the case with copies for the Administrative Law Judge and opposing party.

At the conclusion of the evidentiary hearing, the Administrative Law Judges will choose to: (1) dismiss the complaint, (2) issue a reprimand, (3) find a violation of 211B.06, and/or (4) impose a civil penalty of up to \$5,000. The panel may also refer the complaint to the appropriate county attorney for criminal prosecution. A party aggrieved by the decision of the panel is entitled to judicial review of the decision as provided in Minn. Stat. §§ 14.63 to 14.69.

Any party who needs an accommodation for a disability in order to participate in this hearing process may request one. Examples of reasonable accommodations include wheelchair accessibility, an interpreter, or Braille or large-print materials. If any party requires an interpreter, the Administrative Law Judge must be promptly notified. To arrange an accommodation, contact the Office of Administrative Hearings at 100 Washington Avenue South, Suite 1700, Minneapolis, MN 55401, or call 612/341-7610 (voice) or 612/341-7346 (TTY).

Dated: March 7, 2006

/s/ Barbara L. Neilson
BARBARA L. NEILSON
Administrative Law Judge

MEMORANDUM

The Complainant is currently a member of the Maplewood City Council. In the 2005 election he ran unsuccessfully for Mayor of Maplewood. Respondent Erik Hjelle was a candidate for Maplewood City Council and was elected to the City Council on November 8, 2005. He is also a Maplewood paid-per-call firefighter and owns his own insurance business, Erik Hjelle & Associates, Inc. (Hjelle & Associates). Respondent Maplewood Firefighters Association (MFA) is an organization that represents the approximately 80 paid-per-call firefighters that work for the City of Maplewood.

The Complaint makes the following allegations:

- (1) Respondent Hjelle & Associates, Inc. violated Minn. Stat. § 211A.02.

The Complainant alleges that Respondent Hjelle & Associates made contributions to Respondent Hjelle's campaign in the amount of at least \$2,149.69 but failed to file financial reports as required by Minn. Stat. § 211A.02, subd. 1(a). Specifically, the Complaint asserts that Respondent Erik Hjelle wrote checks from his business account (Hjelle & Associates) to Honsa Printing Company for the printing of campaign material, lawn signs and labels. Minn. Stat. § 211A.02, subd. 1 requires a

“committee” that makes disbursements of more than \$750 in a calendar year to submit an initial report with the filing officer within 14 days of the disbursement and thereafter to file subsequent reports. “Committee” is defined in part as a corporation or association acting to influence the nomination or election of a candidate.¹ Hjelle & Associates meets this definition.

Minn. Stat. § 211A.05 governs the penalty and process for candidates and committees who fail to file financial reports required by Minn. Stat. § 211A.02. Minn. Stat. § 211A.05, subd. 2 provides as follows:

If a candidate or committee fails to file a report on the date it is due, the filing officer shall immediately notify the candidate or committee of the failure to file. If a report is not filed within ten days after the notification is mailed, the filing officer shall file a complaint under section 211B.32.

The process provides only for filing officers to file complaints based on alleged violations of section 211A.02, and specifies that such complaints must be filed only ten days after the filing officer has sent written notification to the candidate or committee of the failure to file. The statute gives the filing officer the discretion to allow untimely filings without resorting to the complaint process. The Complainant lacks standing to allege this violation in his Complaint. Moreover, there is no evidence that the filing officer for Ramsey County notified Respondent Hjelle & Associates of its alleged failure to file the financial reports. The Administrative Law Judge concludes that the Complainant has failed to allege a prima facie violation of Minn. Stat. § 211A.02 on the part of Respondent Hjelle & Associates and this allegation is dismissed.

(2) Respondent Erik Hjelle and Respondent MFA violated Minn. Stat. § 211A.02, subd. 2.

The Complaint alleges that Respondent Hjelle failed to report the contributions he received from Hjelle & Associates and MFA, and that MFA failed to report the disbursements it made to Hjelle in violation of Minn. Stat. § 211A.02. The Complaint claims that in addition to the approximately \$2,149.69 that Respondent Hjelle received from Hjelle & Associates, he also received approximately \$1,513.04 from the MFA. Again, pursuant to Minn. Stat. § 211A.05, only the filing officer may file a complaint alleging a violation of section 211A.02 and only ten days after the filing officer has provided written notice to the candidate or committee of the violation. The Complainant lacks standing to allege this violation, and the Complaint lacks any evidence that the filing officer notified Respondent Hjelle or Respondent MFA of their alleged failure to file financial reports. For these reasons, the Administrative Law Judge concludes that the Complainant has failed to allege a prima facie violation of Minn. Stat. § 211A.02 on the part of Respondents Hjelle and MFA, and these allegations are dismissed.

(3) Respondent Erik Hjelle violated Minn. Stat. § 211A.12.

The Complaint alleges that Respondent Hjelle violated Minn. Stat. § 211A.12 by accepting contributions of at least \$2,149.69 from Hjelle & Associates. This figure represents the total amount of three checks Respondent Hjelle wrote from his business

¹ Minn. Stat. § 211A.01, subd. 4.

account (Hjelle & Associates) to cover printing costs for lawn signs, flyers and stickers. Section 211A.12 prohibits candidates from accepting aggregate contributions in excess of \$300 in an election year. The Administrative Law Judge concludes that the Complaint does allege a prima facie violation of Minn. Stat. § 211A.12 with respect to Respondent Hjelle's acceptance of corporate contributions from Respondent Hjelle & Associates.

(4) Respondents violated Minn. Stat. § 211B.04.

In August of 2005, Respondent Hjelle wrote a check in the amount of \$1,423.91 to Honsa Printing for lawn signs promoting his candidacy for Maplewood City Council. The check was written on his business checking account, Hjelle & Associates, Inc. The lawn signs had a disclaimer stating they were paid for by the Maplewood Firefighters Association. Later, Respondent Hjelle ordered stickers to apply to the lawn signs that contained a more complete disclaimer that stated the signs were prepared and paid for by the Maplewood Firefighters Association and listed the MFA's address. Respondent Hjelle wrote a check to the printing company for the stickers in the amount of \$89.13 from his business account. Because both the lawn signs and the stickers were paid for from the account of Respondent Hjelle & Associates and not MFA, the Complainant alleges that the Respondents violated Minn. Stat. § 211B.04 by not correctly identifying who paid for the lawn signs. This section requires that a disclaimer be displayed on campaign material that identifies the name and address of the person or committee that prepared and paid for the campaign material.

The Administrative Law Judge concludes that the Complainant has failed to state a prima facie violation of Minn. Stat. § 211B.04. The purpose of the disclaimer requirement is to identify for voters who or what group is responsible for the campaign material at issue. Disclaimers are required to be "substantially in the form provided" in section 211B.04(b). Although Respondent Hjelle initially paid for the lawn signs and stickers from his business account, it was determined in a prior campaign case concerning many of the same facts and parties, that MFA ordered the signs and that the printing company (Honsa Printing) later reimbursed Hjelle & Associates the amount it initially paid for the lawn signs after it received a check for the same amount from the MFA.² In other words, the panel found that MFA ordered and eventually did pay for the lawn signs. Given these facts, the Administrative Law Judge concludes that the Complainant has failed to make a prima facie showing that Respondents Hjelle and MFA did not substantially comply with the requirements of Minn. Stat. § 211B.04.

The Complaint also alleges that Respondent Hjelle and Respondent Hjelle & Associates violated Minn. Stat. § 211B.04 by distributing campaign flyers that incorrectly stated they were prepared and paid for by Erik Hjelle when in fact they were paid for by a check written on Hjelle & Associates' account. Again, it was established in the prior campaign case that Respondent Hjelle later rectified this situation by writing a personal check in the same amount in exchange for the printing company refunding the check

² See Findings 35 and 46 in *Koppen v. Maplewood Firefighters Association and Hjelle*, OAH File No. 7-6361-16947 (Order dated March 1, 2006).

written on his business account.³ In other words, Respondent Hjelle eventually did pay for the campaign flyers from his personal account.

The fact that Respondent Hjelle initially paid for the flyers from his insurance business account as opposed to his personal account may be a technical violation but it is not enough to find that either Respondents Hjelle or Hjelle & Associates Inc. failed to substantially comply with the disclaimer requirement, particularly when Mr. Hjelle later corrected the situation by exchanging a personal check for the business check. Anyone reading the flyer would know it was prepared and paid for by Mr. Hjelle in some capacity and would be able to contact him about the material if they so wanted. The fact that Mr. Hjelle initially paid for the flyers from his business account is immaterial to whether the disclaimer requirement was satisfied. The Administrative Law Judge concludes that the Complainant has failed to establish a prima facie violation of Minn. Stat. § 211B.04.

(5) Respondent Hjelle violated Minn. Stat. § 211B.09.

The Complainant alleges that on or about October 17 and 24, 2005, Respondent Hjelle and others stuffed envelopes with campaign material supporting Hjelle and two other candidates while at a Maplewood fire station. The Complainant contends that Respondent Hjelle invited Maplewood firefighters and others to participate in the envelope-stuffing activity. According to the Complainant, this activity amounted to a violation of Minn. Stat. § 211B.09, which prohibits an employee of a political subdivision from using his “official authority or influence to compel a person . . . to take part in a political activity.” The Complainant points out that in an Investigation Report issued by the City concerning the campaign activities at the Maplewood fire station, Respondent Hjelle “acknowledged that he is a city employee.”⁴ The Complainant alleges that Respondent Hjelle invited other Maplewood firefighters to participate in the envelope-stuffing activity at the fire station. In addition, the Complainant points out that in the Investigation Report, Respondent Hjelle admitted that during his campaign he told fellow paid-per-call firefighters that he would take steps to improve their working conditions. Based on these facts, the Complainant alleges that Respondent Hjelle “used his city firefighter position” to influence persons to take part in a political activity, namely stuffing envelopes on Respondent Hjelle’s behalf.

In order to allege a prima facie violation of Minn. Stat. § 211B.09, the Complainant must put forward facts that would support finding Respondent Hjelle used his influence to “compel” persons to take part in a political activity. Complainant has failed to allege sufficient facts to support finding that Respondent compelled anyone to stuff envelopes on the night in question. The Merriam Webster Dictionary defines “compel” to mean “to drive or urge forcefully or irresistibly;” or “to cause to do or occur by overwhelming pressure.”⁵ Complainant has alleged no facts to support finding that Respondent Hjelle used forceful or overwhelming pressure on his fellow firefighters in order to get them to stuff envelopes with campaign material at the fire station. Instead, the panel in the prior case found that MFA members organized a football watching party at the fire station on October 24, 2005, and that several firefighters and friends assisted

³ Id. See Finding 49.

⁴ Ex. 24 attached to the Complaint.

⁵ Merriam Webster Online Dictionary.

with the envelope stuffing.⁶ There was no evidence that Respondent Hjelle compelled anyone to take part in the envelope-stuffing activity. The Complainant has failed to allege sufficient facts that would support finding a prima facie violation of Minn. Stat. § 211B.09. This allegation is dismissed.

(6) Respondent Hjelle & Associates, Inc. violated Minn. Stat. § 211B.15.

Minn. Stat. § 211B.15 prohibits corporations from making contributions to an individual to promote the individual's candidacy or election to political office. The Complainant alleges that the checks written on the account of Respondent Hjelle & Associates, Inc. for the lawn signs, stickers and flyers amount to illegal corporate contributions of at least \$2,149.69 to Erik Hjelle.

The Administrative Law Judge finds that the Complainant has alleged a prima facie violation of this statute. The ALJ notes, however, that the initial check to Honsa Printing for \$1,423.91 written on Respondent Hjelle & Associates' account was later refunded as was the check for the flyers in the amount of \$636.65. Nonetheless, the facts support at least a technical violation of the statute.

(7) Respondent Hjelle and Respondent MFA violated Minn. Stat. § 211B.13.

Minn. Stat. § 211B.13, subd. 2 prohibits a person from knowingly accepting or receiving money or anything of monetary value that is a prohibited disbursement under section 211B.15. The Complaint alleges that Respondent Hjelle and Respondent MFA violated this section by accepting corporate contributions for the lawn signs and flyers from Respondent Hjelle & Associates that are prohibited corporate contributions under section 211B.15.

The Administrative Law Judge finds that the Complainant has alleged a prima facie violation of this statute as to Respondent Hjelle but not as to Respondent MFA. Because the lawn signs and flyers were initially paid for by Hjelle & Associates, the Complainant has made a prima facie showing that Respondent Hjelle did receive something of monetary value from Hjelle & Associates. Respondent Hjelle was the direct recipient and direct beneficiary of the lawn signs and flyers. In addition, there is a prima facie showing that he knowingly received the alleged prohibited contribution by virtue of the fact that he wrote and signed the check.

However, the Complainant has not alleged facts that would support finding that Respondent MFA knowingly accepted or received anything of monetary value from Respondent Hjelle & Associates. Instead, the facts as alleged in this complaint and as found in the prior decision involving the campaign complaint of *Koppen v. Maplewood Firefighters Association and Hjelle*, establish that Respondent Hjelle initially wrote a check in August 2005 to Honsa Printing on his business account for the lawn signs. By November 2005, Respondent Hjelle became aware that he should not have paid for the signs from his business account. He asked an owner of Honsa Printing if she would be willing to refund to him the amount he paid from his business account for the lawn signs in exchange for a check in the same amount from the MFA. She agreed and did

⁶ *Koppen v. Maplewood Firefighters Association and Erik Hjelle*, OAH Docket No. 7-6361-16947, at Finding 45.

reimburse Hjelle & Associates the amount for the lawn signs in November 2005 after Honsa Printing received a check from the MFA for the same amount. MFA wrote the check for the lawn signs on or about November 3, 2005.⁷ The Administrative Law Judge concludes that the Complainant has failed to make a prima facie showing that MFA knowingly received a prohibited corporate contribution from Respondent Hjelle & Associates, Inc. This allegation as to Respondent MFA is dismissed and Respondent MFA is dismissed as party in this matter.

With respect to the three allegations found to set forth prima facie violations of Minn. Stat. §§ 211A.12, 211B.13 and 211B.15, the parties are encouraged to consider whether a hearing is necessary or whether the decision in this matter could be based upon the record established in *Koppen v. Maplewood Firefighters Association and Erik Hjelle*.⁸ This issue will be discussed during the prehearing conference.

B.L.N.

⁷ Finding 46, *Koppen v. Maplewood Firefighters Association and Hjelle*, OAH Docket No. 7-6361-16947 (Order dated March 1, 2006).

⁸ OAH Docket No. 7-6361-16947 (Order dated March 1, 2006).